

DOCKETED

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September 3, 2021

Via Email

Simon Zewdu
Director
Los Angeles Department of Water and Power (LADWP)
111 North Hope Street, Room 1246
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**Application for Confidential Designation for Data in Integrated Energy
Policy Report, Docket 21-IEPR-03**

Dear Simon Zewdu:

The California Energy Commission (CEC) received the confidentiality application submitted by LADWP on June 29, 2021, for specified data contained in the 2021 Integrated Energy Policy Report (IEPR). Specifically, confidentiality is sought for:

Form 1.6a-2019
Recorded Load-Serving Entity (LSE) Hourly Loads, in megawatts (MW)

Form 1.6a-2020
Recorded LSE Hourly Loads, in MW

Form 1.6a-2022
Forecast LSE Hourly Loads, in MW

Confidential designation of this data is requested pursuant to Title 20, California Code of Regulations, section 2505, on the grounds that the information is not otherwise publicly available or readily discoverable in the form or detail provided at this time, that the information is market sensitive and constitutes trade secrets in terms of disclosing LADWP's very recent wholesale and retail activities, that the data is proprietary (belonging to another company, from which LADWP purchased it), and that the release of this information will result in loss of competitive advantage in the wholesale and retail marketplaces relative to applicant's ability to negotiate future contracts for the purchase or resale of energy or capacity at wholesale, or negotiation of contracts with retail customers. The application also states that confidentiality is appropriate under Government Code section 6255(a) because the public interest in nondisclosure clearly outweighs the public interest in disclosure.

A properly filed Application for Confidentiality shall be granted under Title 20, California Code of Regulations, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.) Government Code section 6255 also permits the CEC to withhold a public record where "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

Here, the application states that 1) the confidential records contain commercially sensitive data which could provide insight into LADWP's business strategies; 2) if publicly disclosed, the data could be used to determine historical and forecasted power and capacity needs, which could be used by competitors to cause competitive harm to the applicant, or could be used by suppliers to LADWP's disadvantage in negotiating price and terms or procurement transactions, or could be used by customers to extract better terms in contract negotiations with the applicant; 3) the data has commercial value to the applicant which provides a competitive advantage; and 4) the confidential records are not available to the public.

The application further requests that the data be kept confidential for five years from the date the data was collected; that is, 2019 data be kept confidential until July 1, 2025; 2020 data be kept confidential until July 1, 2026; and 2022 data be kept confidential until July 1, 2028. In each instance, this would be equivalent to three years after the data was given to CEC. Thus, it is appropriate for CEC to grant confidentiality on these requested terms.

Under California Code of Regulations, title 20, section 2505, subsection (b), applicant, as a government entity, may submit information designated by that government entity as confidential under the Public Records Act without an application for confidential designation, and CEC will designate this information as confidential. The application, although not required, clearly demonstrates

applicant's treatment of the specified data as confidential under the Public Records Act, and so the specified data are entitled to such designation by CEC.

The application is clear that confidentiality is sought for trade secret information related to utility hourly load data. Therefore, LADWP has made a reasonable claim that the law allows CEC to keep the specified data from public disclosure.

The confidentiality application for the information in the forms above is granted. The information will remain confidential for five years after the collection date of the specified data (the equivalent of three years after the data was given to CEC).

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the executive director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in Title 20, California Code of Regulations, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without submitting an application by following the procedures set forth in Title 20, California Code of Regulations, section 2505(a)(4).

If you have any questions, please contact Raj K. Dixit, attorney, at raj.dixit@energy.ca.gov or (916) 776-3055.

Sincerely,



Drew Bohan
Executive Director